

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
RONALD C. WHITE )

For Appellant: Ronald C. White,  
in pro. per,

For Respondent: Jon Jensen  
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Ronald C. White against a proposed assessment of additional personal income tax in the amount of \$447.30 for the year 1978:

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The question presented for our resolution is whether appellant was entitled to head of **household** filing status for the year 1978'.

In the early months of 1978, appellant separated from his wife. By **April 13**, 1978, appellant and his wife reached a marital settlement agreement which stipulated, inter alia, that their two minor children, Ronald, age 3 years, and Jonathan, age 2 months, would **be** placed in the custody of their mother subject to appellant's reasonable visitation rights. Under the agreement, appellant promised to pay child support **to his wife** beginning the next month. In May 1978, the final decree of dissolution of marriage was apparently entered. Permanent custody of the two boys was awarded to appellant's wife.

Appellant filed a California personal income **tax** return for 1978 claiming status as a head of household. Subsequently, on respondent's head of household questionnaire (FTB 4803-M), appellant named his older son, Ronald, as the individual qualifying him for head of household filing status and claimed his younger son, Jonathan, as an additional dependent. Appellant also indicated on the questionnaire that Ronald did not live with him for the entire year but was absent from appellant's household **from June** 1978 to October 1978,

Based upon the custody agreement and appellant's statements on the questionnaire, respondent determined that **appellant** did not **qualify** as a head of household since the qualifying dependent did not occupy his home for the entire year. Consequently, respondent disallowed the claim for head of household filing status and recomputed appellant's tax liability for 1978. Following the denial of his protest, - appellant appealed the proposed assessment of additional tax.

Appellant's position is that he is entitled to the status of head of household because the two boys lived with him for the most part of the year in question. Appellant admits that the **two children** lived with their mother when they **were** absent from his household between June and October. However, appellant argues that the children's absence was a temporary **one to** which he agreed so that he could arrange living quarters for them in his home and take a vacation. While they resided with their mother, appellant states that he maintained a household in anticipation of their return because he knew that their mother was planning to enter a hospital for an

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operation. Appellant states that the children lived with him while their mother was hospitalized but returned to her home in January 1979.

Respondent's position is that appellant's household did not constitute the children's principal place of abode for the taxable year. Noting that the children occupied the mother's home for several months after she obtained legal custody of them, respondent contends the children changed their principal place of abode to the mother's home at that time. We agree with respondent for the following reasons.

The term "head of household" is defined in section 17042 of the Revenue and Taxation Code, which provides, in pertinent part:

For purposes of this part, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, and . . . .

(a) Maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of--

(1) A son, stepson, daughter, or stepdaughter of the taxpayer ....

First, section 17042 provides that a taxpayer's home must constitute the principal place of abode of the qualifying individual for the taxable year. The term "principal place of abode" has been defined as the one place of abode most important to the qualifying individual, relegating any other abode to secondary rank. (Appeal of John William Branum, Cal. St. Bd. of Equal., Aug. 16, 1979.) Generally, the principal place of abode is determined by the physical occupancy test, which requires that the qualifying dependent live in the taxpayer's home for the entire year. (Appeal of Barbara J. Walls, Cal. St. Bd. of Equal., April 6, 1978; see John A. Bayless, 61 T.C. 394 (1973); Jagtar Singh Khinda, ¶ 82,042 P-H Memo. T.C. (1982).) Where, however, significant amounts of time are spent by the qualifying individual in two different households, the place where the greater amount of time was spent is considered the principal place of abode. (Appeal of Larry Anderson, Cal. St. Bd. of Equal., July 28, 1983; Appeal of John William Branum, supra.) In any case, it is settled that

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the legal custody of a child is not decisive of the principal place of abode of the child in head of household cases. (Allan L. Blair, 63 T.C. 214 (1974); Appeal of Barbara J. Walls, supra.)

The record in the instant appeal does not reveal with whom the two boys resided prior to the marital settlement agreement in May. After entry of the judgment granting legal custody to the mother, however, it is undisputed that the children lived with her from June to October. In other words, out of the seven months of the appeal year for which we know their whereabouts, the children spent five months in the household of their mother and two months in the home of appellant. Since it appears that the children spent the greater amount of time in their mother's home and appellant has not proven otherwise, we are unable to find that appellant's home constituted the principal place of abode for his children during 1978,

Second, even where the qualifying individual has not occupied his household for the entire year, the taxpayer may maintain head of household status if he can show that the specified person was only temporarily absent from his household.. (Appeal of Richard Byrd, Cal. St. Bd. of Equal., Dec. 13, 1984; Appeal of Gwen R. Fondren, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Henry C. H. Hsiung, Cal. St. Bd. of Equal., Dec. 17, 1974.) Here, appellant's argument that the boys' residence with their mother was a temporary arrangement is untenable. The children's physical occupancy in their mother's home following the termination of appellant's custody rights indicates to us that they were not merely visiting her but, in fact, established their principal place of abode in her household no later than June of the appeal year. (See, e.g., Stanback, Jr. v. U.S., 39 Am.Fed.Tax R.2d 805 (1977); Alex A. Ruff, 52 T.C. 576 (1969).) This acquisition of a permanent home with their mother coincided with the abandonment of any household that appellant may have maintained for them prior to that time. (See Walter J. Hein, 28 T.C. 826 (1957); Appeal of John William Branum, supra.) Appellant may have anticipated that the boys would stay with him when his former wife entered the hospital. However, it is obvious that any time the children spent in appellant's care during their mother's hospitalization was that which was temporary.

Based on the record before us, we find that appellant has failed to establish that his household was

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the **prinicipal** place of abode of his children during the year in question. Accordingly, respondent's action in denying appellant's **claim** for head of household filing status must be sustained.

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O R D E R

Pursuant, to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 1'3595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Ronald C. White against a proposed assessment of additional personal income tax in the amount of \$447.30 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of February , 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

Ernest J. Dronenburg, Jr. . . Chairman

William M. Bennett . . Member

Richard Nevins . . Member

Walter Harvey\* . . Member

                    - - - -                     , Member

\*For Kenneth Cory, per Government Code section 7.9